UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Eighteenth Region

MERITCARE THIEF RIVER FALLS NORTHWEST MEDICAL CENTER¹

Employer

and

SYLVIA PAULINE MAJERES

Case 18-RD-2666

Petitioner

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

Union

MERITCARE THIEF RIVER FALLS NORTHWEST MEDICAL CENTER

Employer

and

Case 18-RC-17616

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION in 18-RD-2666 and ORDER DISMISSING PETITION in 18-RC-17616

The Petitioner in Case 18-RD-2666 seeks to decertify the Union in a unit of about 48 LPNs employed by the Employer at its Thief River Falls hospital located at 120 Labree Avenue South and at its clinic located at 1720 Highway 59 South. The Union

¹ The name of the Employer, for both the RD and RC petitions, appears as stipulated by the parties at the hearing.

seeks the dismissal of the RD petition, contending that while it represents a unit of about eight LPNs at the hospital, it does not represent the LPNs at the clinic. The Employer agrees with the Petitioner that the sought-after unit in the RD (i.e., a unit consisting of the LPNs at both the hospital and the clinic) is coextensive with the current recognized unit.

The Petitioner in Case 18-RC-17616 seeks to represent a unit of LPNs employed by the Employer at the clinic. The Employer maintains that the unit sought by the Petitioner in the RC petition is not appropriate because the unit sought is subsumed within the recognized unit of the hospital and the clinic LPNs already recognized by the Union.²

Based on the record and relevant Board law, I find that the petitioned-for unit in the RD petition is the recognized and represented unit and therefore constitutes the appropriate unit for a decertification election.

Regarding the RC petition, I find that the petitioned-for unit of clinic LPNs is already part of the recognized and represented unit covered by the existing contract; that the unit sought by the Petitioner in the RC is therefore an inappropriate unit; and that the RC petition should be dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

render a clinic-only LPN unit inappropriate.

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² The Employer alternatively asserts that even if the unit sought in the RC petition were *not* found to be already represented by the Union, it would still be an inappropriate unit compelling dismissal of the RC petition for two reasons: (1) contract bar principles compel the dismissal of the RC petition since it was not filed within the 90-120 day window period required for health care petitions; and/or (2) factors such as the integration of LPN functions and the common control of labor relations for the clinic and the hospital

- 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³
- 3. The labor organization involved claims to represent certain employees of the Employer.
- A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and
 of the Act.
- 5. The first part of this decision contains a review of the Employer's operations. In the second section, the parties' bargaining history is reviewed, including the events that occurred on October 9, 2008.⁴ In the next section, I review the relevant events occurring after October 9 among the parties and between the Union and the LPNs. Finally, I analyze Board precedent and its applicability to the facts of this case.

³ The Employer, MeritCare Thief River Falls Northwest Medical Center, is a Minnesota corporation engaged in the operation of providing health care out of its hospital located at 120 Labree Avenue South, Thief River Falls, Minnesota and its clinic located at 1720 South Highway 59 SE, Thief River Falls, Minnesota. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$1,000,000 from its operation and during the same period received at its Minnesota facilities goods valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

⁴ All dates are in the calendar year 2008 unless otherwise noted.

The Employer's Operations⁵

The hospital and clinic facilities in issue herein have gone through a series of organizational and operational changes over the past two years. In November 2007, the hospital—then the Northwest Medical Center—became a wholly-owned subsidiary of the Fargo-based MeritCare Health Systems. In January 2008, the clinic—formerly the Dakota Clinic—was sold to MeritCare Health Systems, and the Dakota Clinic LPNs became employees of MeritCare Health Systems, which by that time was the parent company of the hospital as well as the clinic.

In 2008, it was decided that the clinic should be integrated within the hospital, to become a department within the hospital, rather than a separate entity. The Employer provided testimony indicating that there were both economic and patient care-related motivations for the integration. The integration was particularly driven by the Employer's goal to implement provider-based billing, which would require that the clinic be part of the hospital.⁶

The integration of the hospital and clinic was implemented in stages in 2008.

LPNs working at both the clinic and the hospital received newsletters informing them of the process and urging them to attend employee forums that were convened to share information and answer questions. With the completion of the process, all clinical departments at both the clinic and the hospital now report to the Employer's chief

⁵ In the record, the parties and witnesses use variant terms when referring to the Employer, e.g., the "medical center," the "hospital," "Northwest" and "MeritCare." For purposes of clarity, my references to the "medical center" in this Decision/Order refer to the party-Employer, i.e., the employing entity of both the hospital and clinic LPNs. My references to the "hospital" or the "clinic" refer to those specific physical facilities.

⁶ The Employer testified that although MeritCare purchased the Dakota Clinic in January 2008, the Employer made no movement toward incorporating the clinic LPNs into the existing hospital unit at that time because provider-based billing was not yet in effect.

clinical officer, Janell Hudson. Similarly, the Employer's chief operating officer, Robert Lovejoy, now handles all HR functions for both facilities.

The integration of the clinic LPNs as part of the hospital was completed on about October 27. As part of the integration process, all clinic LPNs were required to terminate their employment at the clinic and complete employment applications for employment by the Employer at the medical center. In addition to the LPNs, all other employees of the clinic also became employees of the medical center. The integration of *all* employees at the clinic as hospital employees was completed by December 31.⁷

The Parties' Bargaining History

The parties' pre-October 2008 bargaining history

The Union and the Employer have a collective-bargaining relationship covering medical center LPNs. The current contract is effective by its terms from April 1, 2006 to March 31, 2009. The recognition clause of the current contract provides:

This contract shall apply and be limited to the LPNs employed by the Medical Center. The Medical Center recognizes the Union as the exclusive collective bargaining representative of all Licensed Practical Nurses employed by the Medical Center.

At the time the current contract was negotiated, the LPNs encompassed by the unit included LPNs working at the hospital and LPNs working in an adjacent long-term care facility. The Employer no longer owns the long-term care facility, and those LPNs are not in issue herein.

part of the IAM's 85-employee hospital unit.

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⁷ On December 12, the Minnesota Nurses Association (MNA) and the Employer agreed that the MNA's 12-15 clinic RNs would become part of the MNA's 70-employee RN unit at the hospital, effective December 22. A similar agreement was reached between the Employer and the International Association of Machinists and Aerospace Workers (IAM) that the IAM's single employee at the clinic would become

Among the questions discussed at the employee forums convened by the Employer before October 2008 was whether the LPNs at the clinic were required to "join" the Union after the integration of the clinic within the hospital was complete. Employer witnesses testified that they informed the clinic LPNs that it was the Employer's understanding that once the clinic LPNs became employees of the medical center, they would need to become members of the Union or pay Union "dues," per the requirements of the union-security provision of the collective-bargaining agreement.

RD Petitioner Sylvia Majeres corroborated the Employer's testimony that it was clearly stated at the pre-October employee forums that the clinic LPNs would be part of the hospital LPNs' unit once the transition of the clinic into a department of the hospital was complete.

The parties' meeting on October 9, 2008: the Employer's testimony

Cathy Warner is a staff representative for the Union. On October 9, 2008, she and Lovejoy met per the Union's request because of the Union's concerns over an issue concerning the LPNs in a particular department of the hospital. Hudson and LPN hospital steward Arlan Hofstad were also present for the meeting. This meeting forms the foundation for the Employer's contention that the Union represents the clinic LPNs, so the parties' testimony concerning the substance of the meeting will be covered in some detail.

The Employer's testimony asserts that it clearly stated at this meeting, through Chief Operating Officer Lovejoy, its position that once the clinic became part of the hospital, the clinic LPNs would become part of the existing LPN bargaining unit, and that the Union, through Warner, agreed.

According to the Employer, it then proposed wage rates for the clinic and hospital LPNs that provided higher wage rates for the evening/weekend LPNs at the hospital.

Also discussed at the meeting, according to the Employer, was how the seniority for the clinic and hospital LPNs would be handled.

The Employer testified that after it made the wage proposals covering both the hospital and the clinic LPNs, the Union—through Warner—responded that the wage proposal "looks good," and asked for time to speak with Hofstad in private. After a brief caucus, the parties' representatives reconvened and, according to the Employer, Warner said that the Union was "ready" and the proposal "looks good" and urged, "let's move forward." It was agreed that Lovejoy would draft a Letter of Understanding (LOU).

The Employer drafted the LOU as agreed and the parties signed the document that same day. According to the Employer, Warner confirmed that "it looks great" prior to executing the three-page LOU consisting of "Schedule B" [hospital LPN wages], "Schedule C" [clinic LPN wages], and a cover page which reads:

Regarding the affiliation between Northwest Medical Center and MeritCare Health system [sic], the parties agree that the current United Steelworkers contract running from April 1, 2006 to March 31, 2009 shall remain in full force and effect during its terms except for Schedule B hospital LPN wage grid and Schedule C clinic LPN wage grid effective October 13, 2008.

The wages in Schedules B and C are increases over the wage rates contained in the parties' contract as Schedule A, and became effective on October 13.

When Lovejoy asked Warner on October 9 if other new contract terms would need to be negotiated for the clinic LPNs, Warner—according to Lovejoy—replied, "No, they [the clinic LPNs] will fall under this contract." The parties are in agreement that the

Employer neither exerted pressure upon the Union to sign the LOU nor presented the wage proposal as a "take it or leave it" offer.

In addition to the discussion of wages at the October 9 meeting, the Employer testified that Warner asked Lovejoy if the Employer would be willing to distribute dues check-off authorization cards to the clinic LPNs, and the Employer agreed to do so as soon as the Union sent them to Cindy Dally, the Employer's human resources generalist.

The parties' meeting on October 9, 2008: the Union's testimony

Warner has served as a staff representative for the Union for five years and is responsible for 26 collective-bargaining agreements. Warner testified consistently with the Employer's testimony that the October 9 meeting was requested by the Union to discuss some issues surrounding hospital LPNs in the medical-surgical unit. Warner testified that it was not until the October 9 meeting that she learned that the clinic LPNs would become "hospital" (medical center) employees because of provider-based billing.

Warner testified that Lovejoy proposed a pay schedule providing for an approximate 8 percent wage increase for the LPNs. When asked if the Union would agree with these wage increases mid-contract, Warner agreed to do so, adding in her testimony, "We are not going to say no to an increase for our members."

Warner initially testified that while she agreed to the wage increases on October 9, she perceived the increases to be more in the nature of annual increases than union-negotiated increases. She later testified that she agreed to the wage increases because she had understood that the clinic LPNs would be actually physically moving to the hospital to work and would be joining the existing hospital unit for that reason.

Warner also testified, however, that she understood that the clinic employees would become employees of the medical center after the integration, and that the recognition clause established that the Union is the representative of employees employed by the medical center.

When questioned during her testimony about whether the Union's execution of the LOU on October 9 evinced representational authority, Warner responded that while she never stated at the October 9 meeting that the Union did not represent the clinic LPNs, she never stated that the Union *did* represent the clinic LPNs, either. Warner specifically denies that there was any discussion of how to merge the clinic and hospital LPNs' seniority at the October 9 meeting.

Warner confirmed the Employer's testimony that, during the October 9 meeting, she asked the Employer to distribute the Union's dues check-off cards to the clinic LPNs.

LPN hospital steward Arlan Hofstad was at the October 9 meeting and testified that he understood that the new wage schedule to which the Union agreed at that meeting supplanted the wage schedule in the current collective-bargaining agreement. Although Hofstad testified that he expected some sort of unspecified "due process" to be implemented before the existing LPN contract would be fully applied to the clinic LPNs, he conceded that he never heard Warner or anyone else from the Union express such an expectation.

Post-October 9 Events among the Parties and between the Union and LPNs E-mail communications

The parties' discussion of dues check-off cards and the Employer's agreement to distribute them as soon as the Union provided copies of the cards is confirmed in an e-mail from Warner to Lovejoy dated October 10 and characterized by Warner as a follow-up to the October 9 meeting. In the e-mail, Warner states, "I will have my office mail you the USW Dues Deduction Authorization cards." In the same October 10 e-mail, the Union requested the names, addresses, dates of hire/seniority dates and current wages of each LPN by October 27 or as soon as possible "re: accretion of clinic LPNs into the NWMC/USW LPN Contract."

In an e-mail dated October 27, Lovejoy asked Warner if the Union would be willing to grandfather in a specified clinic LPN whose wage rate was higher than the agreed-upon range in the LOU, or if the Employer would need to reduce her rate. Warner responded on October 27 that "the Union is in agreement to grandfather the wage" of the named LPN. Warner testified that this agreement was not in the nature of a Union agreeing to a term for a represented employee, but was merely the Union's "position" on the grandfathering issue.

On October 27, in the same e-mail in which Warner agreed to grandfather in the higher wage rates for one LPN, Warner also referenced the parties' scheduled labor-management meeting on November 13, and asked if the Union could use the same room for a meeting with the LPNs at 5:30 p.m. that same evening. The Employer agreed.

<u>The collection of dues check-off cards and the Union's November 13 meeting</u> with the LPNs

After the Union provided dues check-off cards to the Employer per the parties' discussions at the October 9 meeting and in the October 10 e-mail, the Employer delegated the duty of distributing the cards to nursing supervisor Florence Nelson.

Majeres testified that when she received her check-off card from Nelson on November 13, Nelson said that she was "supposed" to give the cards out, and that Majeres was to fill out the card and take it with her to the November 13 union meeting scheduled for later that day.

The Union's meeting with the LPNs on November 13 was the first time that the Union formally gave information to the LPNs about the LOU executed on October 9, even though the higher wage rates had already gone into effect on October 13. There was a total of about 20 clinic and hospital LPNs at the meeting, with the majority of the LPNs in attendance being from the clinic. Hofstad and another LPN steward, Marilyn Stoneouse, were also there.

The meeting had been publicized through flyers mailed and/or posted by the Union in which the meeting was characterized as an "informational meeting" with the following text:

INFORMATIONAL

MEETING

UNITED STEELWOKERS

LOCAL UNION 9349

REPRESENTING THE

LICENSED PRACTICAL NURSES

AT NORTHWEST MEDICAL CENTER – MERITCARE

At the November 13 meeting, according to Warner's testimony, the clinic LPNs expressed concern about being told they "had" to "join" the Union. The LPNs did not have a copy of the current contract (Warner testified that contracts are normally distributed by the Employer), so there was no substantive discussion of any particular contract benefits or provisions. Warner testified that she explained to the clinic LPNs what had happened at her October 9 meeting with Lovejoy and also explained that the clinic LPNs would become hospital employees and be under the hospital contract when the "transition" was complete. As Warner testified:

This is what I told them [the LPNs at the November 13th meeting]. That – and they would [be] part of the bargaining agreement. And that's what the Employer had told them [t]he hospital informed us [the Union] that these employees were going to be part of the bargaining unit, and that's what we told these LPNs at this meeting

While Warner attributes the fact that she made no effort at the November 13 meeting to collect a showing of interest for an RC petition because that was the responsibility of the Union's director of organizing, the record contains no indication that as of the November 13 meeting, the Union had any intention to pursue an RC petition for the clinic LPNs. In fact, Warner testified that there was no discussion whatsoever at the meeting about the procedures by which someone can join a union (e.g., through authorization cards or an election).

RD Petitioner Majeres testified that Warner made it clear at the November 13 meeting that the clinic LPNs would be represented by the Union and that several clinic LPNs raised concerns about not having a choice in the matter. As Majeres testified, "Not once were we ever told that we were not covered under this [the current medical

center agreement] contract. We were never told that there would be an election process." Majeres also testified that they were never told that the Union believed that the Employer had inappropriately distributed dues deduction cards to them.⁸

Concerned by the tone of the November 13 meeting and some of the clinic LPNs' expressed frustration about being "forced" into the Union, Warner afterwards called USW Organizing Coordinator George Dubovich.

The Union's December 10 meeting with the LPNs

A second Union meeting with the LPNs was convened on December 10, the day before the RD petition was filed. Dubovich and Staff Organizer Jerry Perpich led the meeting. Majeres testified that it was at this meeting that she heard, for the first time, the Union's contention that the Employer had inappropriately passed out the dues deduction cards; that the clinic LPNs were not, in fact, covered by the current medical center LPN contract; and that an election would have to be conducted to determine if the Union was to represent the clinic LPNs.

At the December 10 meeting, Majeres was offered a union authorization card for the first time. The Union also distributed flyers explaining to the clinic LPNs the benefits of being a USW member and the procedures by which to become represented.

Majeres testified that the Union's presentation of itself as the bargaining representative for the clinic LPNs was reinforced through a packet of materials she received "welcoming" her into the Steelworkers and conveying other messages that made it clear that she, as a clinic LPN, was already in the unit. Although Majeres claimed with certainty that these materials were received before she filed the RD petition on December 11, she was unable to identify how or when she received these materials, or whether any other clinic LPNs received them. My decisions herein are not based in any way on the content or alleged receipt of these materials, which the Union denies having provided to the clinic LPNs.

The Union's December 15 reopener letter

The Union notified the Employer of its desire to negotiate a new collective-bargaining agreement in a standard reopener letter dated December 15. In the reopener, the number of employees covered by the contract is listed as "43." While the Employer asserts that this number evinces acknowledgement by the Union that it represented both the hospital and clinic LPNs, the Union counters that it inadvertently repeated the number of hospital and long-term care LPNs in the unit as it existed prior to the 2006 negotiations. I find that the record is inconclusive as to why the Union stated in its reopener that there were 43 LPNs in the unit as of December 15, and I do not rely on this in any way for my decision.

The Union's December 19 letter to the Employer

The Employer testified that it did not hear anything from the Union indicating that the Union was taking the position that it didn't represent the clinic LPNs until late

December, after the petition in 18-RD-2666 had already been filed on December 11. By letter dated December 19 and addressed to Lovejoy, the Union—through Dubovich—notified the Employer:

The USW does not represent any Merit Care Thief River Falls Southeast Clinic employees, including any of the Licensed Practical Nurses who perform service at Merit Care Thief River Falls Southeast Clinic located at 1720 Highway 59 South in Thief River Falls.⁹

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The Union has not made any claim, in the record or in its post-hearing brief, that its December 19 letter constitutes a disclaimer of the merged unit of the clinic and hospital LPNs, and the evidence does not support such a conclusion. In fact, when offering this letter as an exhibit, the Union itself—through Dubovich—prefaced its introduction by stating, "basically it's a letter requesting that MeritCare cease taking dues out of employees' checks." To the extent that the letter includes a statement that the Union "does not represent any [clinic] employees," that denial is merely a restatement of the underlying dispute herein, i.e., that the Union denies *ever* having agreed to include the clinic LPNs as part of the medical center LPN unit.

Dubovich went on to write that the Union had learned that the Employer was withholding union dues from two clinic LPNs from whom dues check-off authorizations had been completed when they moved from the hospital to the clinic. The Union emphasized in this letter that it was the Union's position that the withholdings were not proper and should immediately be discontinued, adding, "[t]hese two individuals have dissolved their union dues withholding obligation by leaving their employment at the Merit Care Thief River Falls Medical Center Hospital." Dubovich also emphasized the Union's intention to reimburse the two clinic LPNs from whom dues had been withheld. The Employer chose not to respond to this letter in any way because the RD petition and its surrounding issues were then pending.

The Employer contends that in addition to these two LPNs, it had also received and forwarded to the Union a few additional dues check-off authorizations from other LPNs, prior to the filing of the decertification petition on December 11. The Union, through Warner, denied knowledge of any additional dues check-off authorizations having been forwarded by the Employer. Warner, however, did testify that she received some additional check-off authorizations at the November 13 LPN meeting, but that she chose not to forward these to the Employer because of the frustration expressed by some clinic LPNs at the November 13 meeting about being "forced" into the Union.

<u>Analysis</u>

The first question to be answered is whether the Union's conduct and actions evince an agreement by the Union that the clinic LPNs are part of the recognized LPN unit as described in the recognition clause quoted above.

In determining whether a contractual agreement exists in labor law, "the technical rules of contract law do not determine the existence of an agreement." Mack Trucks, Inc. v. International Union, United Auto, Aerospace and Agricultural Implement Workers of America, UAW, 856 F.2d 579, 591-92 (3rd Cir. 1988), cert. denied 489 U.S. 1054 (1989).

> Instead, courts have looked to the surrounding circumstances and to the parties' conduct manifesting an intention to abide by agreedupon terms The parties' objective intent to create a contract is relevant - not their subjective beliefs

856 F.2d at 592 (citations omitted).

I find, based on the record evidence, that the record strongly supports a conclusion that the Union's conduct reveals an objective agreement and intent to enter into an agreement with the Employer to represent the clinic LPNs as part of the existing medical center LPN unit. Specifically, the record establishes that the Union executed the Letter of Understanding on October 9, 2008, and engaged in several sustained actions after that time consistent with an intent to represent the clinic LPNs. Most probatively, the evidence establishes that the Union agreed at the October 9 meeting to represent the clinic LPNs and bargained wages and other terms for the clinic LPNs; 10 that the Union provided, collected and processed dues check-off authorization cards for clinic LPNs; 11 and that the Union unequivocally informed clinic LPNs at the November 13 meeting that the Union represented them because they had been merged

¹⁰ I have carefully considered the Union's argument that the wage increases implemented for the clinic LPNs on October 13 were pre-planned increases that would have been implemented even if the Union had not signed off on the wage schedules on October 9, but the record does not support this contention.

While the record establishes that the Union, by letter dated December 19, asked the Employer to discontinue dues check-off for clinic LPNs, there is no evidence that the Union requested such action prior to the filing of the RD petition on December 11.

into the existing unit of the hospital LPNs.¹² Moreover, there is no evidence that the Union notified the Employer, prior to the filing of the RD petition on December 11, that it was the Union's position that it did not represent the clinic LPNs.

Once a determination has been reached that the Union represents the clinic LPNs, the remaining analysis is straightforward. It is well-established under Board law that "the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit." *Brom Machine & Foundry Co.*, 227 NLRB 690, 690 (1977). See also *The Root Dry Goods Co., Inc.*, 126 NLRB 953, 956 (1960)("it is well established that the Board will conduct a decertification election only in the recognized or certified bargaining unit").

As the Board emphasized in Fast Food Merchandisers, Inc., 242 NLRB 8 (1979):

[I]t would obviously frustrate the Board policy of directing decertification elections in the existing bargaining unit to permit the parties to vary that unit and participate in an election in a different unit of their own choosing.

242 NLRB at 9 [footnote omitted].

Accordingly, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time licensed practical nurses employed by the Employer at its hospital located at 120 Labree Avenue South, Thief River Falls, MN and its clinic located at 1720 Highway 59 South, Thief River Falls, MN; excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

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¹² In its brief the Union states that it is inappropriate and illegal to force a much larger group of clinic LPNs into a smaller group. The brief further states that such accretions are allowed only if there is a numerical majority. The record contains no evidence whether the Union has or has not demonstrated majority status in the larger, integrated LPN unit. Further, neither of the unfair labor practice charges currently pending before the Region (18-CA-18937 and 18-CA-18958) contains unlawful recognition allegations.

In light of my determination that the Union already represents the unit that it seeks to represent as the RC Petitioner, I further find that the RC petition seeks an inappropriate unit and should therefore be dismissed.

DIRECTION OF ELECTION in 18-RD-2666

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. 13

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To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **United Steelworkers of America, AFL-CIO, CLC.**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election in 18-RD-2666 may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by 5:00 p.m. (Eastern Time) on February 24, 2009**. The request may be filed through E-Gov on the Board's website, www.nlrb.gov, 14 but may not be filed by facsimile.

ORDER DISMISSING PETITION IN 18-RC-17616

IT IS HEREBY ORDERED that the petition filed in Case 18-RC-17616 be, and it is, dismissed.

addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that three copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401-2221, on or before close of business on February 17, 2009. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

To file a request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Order Dismissing Petition in 18-RC-17616 may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by 5:00 p.m. (Eastern Time) on February 24, 2009**. The request may be filed through E-Gov on the Board's website, www.nlrb.gov, but may not be filed by facsimile.¹⁵

Signed at Minneapolis, Minnesota, this 10th day of February, 2009.

/s/ Robert W. Chester

Robert W. Chester, Regional Director Region Eighteen National Labor Relations Board 330 South Second Avenue, Suite 790 Minneapolis, MN 55401-2221

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¹⁵ See footnote 14 above.